Supreme Court of the United States

October Term, 1953

No. 188

UNITED CONSTRUCTION WORKERS, AFFILIATED WITH THE UNITED MINE WORKERS OF AMERICA; DISTRICT 50, UNITED MINE WORKERS OF AMERICA; AND UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

LABURNUM CONSTRUCTION COMPANY,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE,
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Richmond 12, Virginia.
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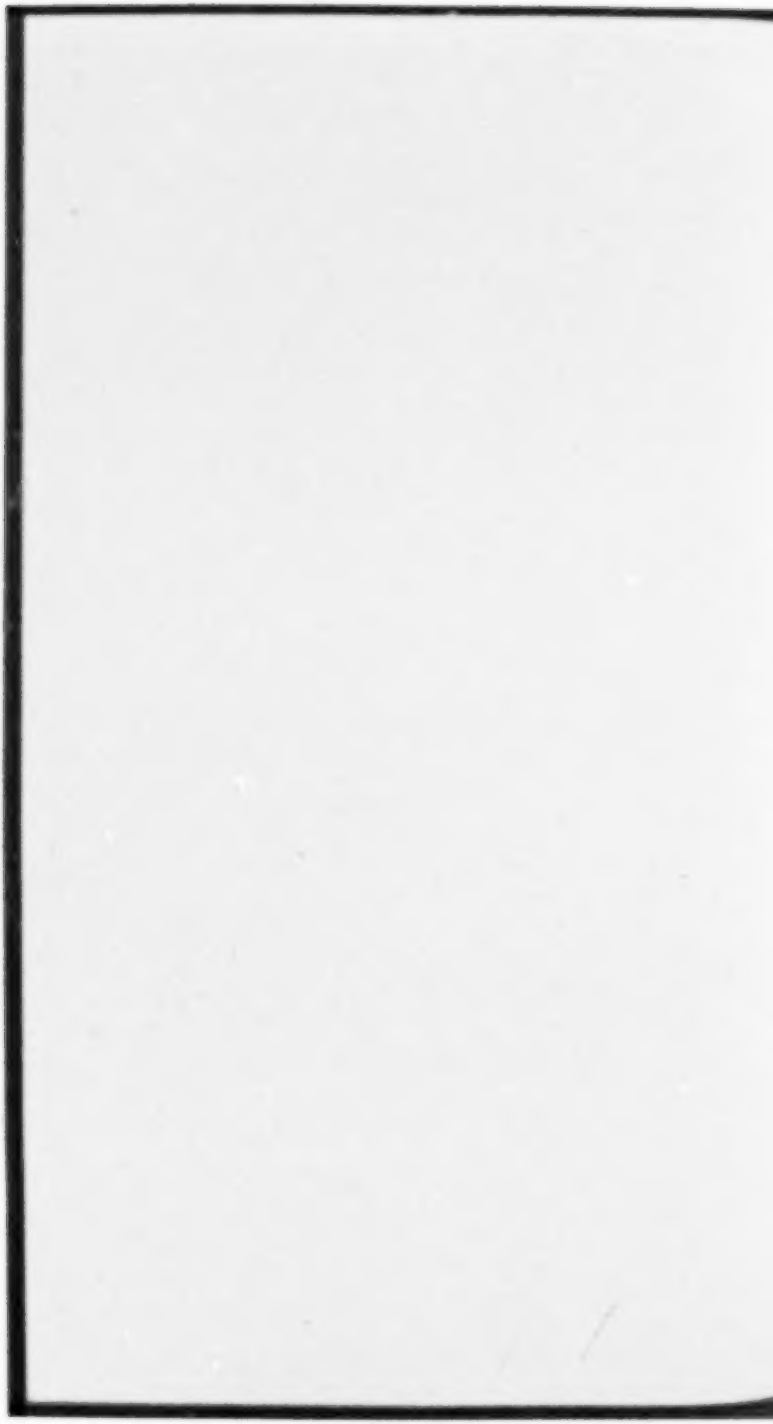

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OPINION OF COURT BELOW

The opinion of the court below (the Supreme Court of Appeals of Virginia), printed at R. 1945, is reported at 194 Va. 872.

JURISDICTION

The date of the judgment sought to be reviewed is April 20, 1953. The jurisdiction of this Court is claimed under 28 U.S.C., section 1257(3).

STATEMENT

The action was at law for damages, both compensatory and exemplary, for common law tort.

Laburnum's case was: That it was, pursuant to contract, engaged in the construction of a coal tipple, dwelling houses and other structures for Pond Creek Pocahontas Company at that Company's Number One Mine then being developed deep in the woods and mountains in an isolated section of Breathitt County, Kentucky; that it was employing various craftsmen who belonged to the American Federation of Labor; that while its work was in progress, on July 14, 1949, Petitioners, through their field representative, William O. Hart, made known to Laburnum (via a long distance call from Hart to Bryan, President of Laburnum) that Laburnum was "working in United Mine Workers' territory" and that Petitioners were going "to take over" the job, and that he, Hart, "was intending to organize all" of Laburnum's workers, "including the carpenters, electricians, pipefitters, iron workers, millwrights, laborers and everybody else", and that if Laburnum didn't make an agreement recognizing United Construction Workers they were going to close down Laburnum's job; that Laburnum refused to recognize Hart; that thereafter there were persistent rumors that the Mine Workers were coming to the job site with a large gang of armed men to run Laburnum off the job; that on July 26, 1949, Hart made good his threats by leading to Laburnum's job site a gang of men estimated at from 75 to 150 in number; that these men were armed, some with guns, many with knives, drunken and rough looking; that Hart, backed up by his gang, made it plain that Laburnum's men were either going to join Hart's union, get off the job or be killed; that Laburnum's men wouldn't join but were scared off the job; that La-

burnum was never able to persuade its men to return to the job; that as a result it lost its contract with Pond Creek Pocahontas Company and was, in fact, "run out of Kentucky", and was thereby damaged.

The jury was instructed as follows (Instruction C, R. 137):

> "The jury is instructed that:
> "The plaintiff's common laborers and carpenter helpers had the right, free from restraint or coercion by the plaintiff or its agents, to associate for self-organization; to designate collectively representatives of their own choosing; to negotiate the terms and conditions of their employment, all for the purpose of effectively promoting their own rights and welfare. Such employees, collectively or individually, had the right to strike, to engage in peaceful picketing, and to assemble peaceably.
> "In the exercise of the above rights such employees had the right to interfere with the plaintiff's business without being liable in damages for such interference.
> "The above rights are not lost because others who are not employees of the plaintiff join with them in asserting the employees' rights.
> "Minor disorders and trivial rough incidents on a picket line, not serious enough to intimidate or coerce a man of ordinary strength of character, do not deprive the picketing of its peaceful character."

(Instruction E, R. 139):

> "The jury is instructed that:
> "If you find from the evidence that the plaintiff's employees refused to work for it solely because of the existence of a peaceful picket line and that they would have worked if there had been no picket line, your verdict must be for the defendants."

The jury's verdict, for Laburnum, has been upheld as supported by the evidence by the Supreme Court of Appeals of Virginia, except as to certain elements of compensatory damages.

Thus, by jury verdict there is no question of peaceful activities or even minor disorders in this case. Here the jury has found that Laburnum's employees were driven from their jobs and that Laburnum's job was shut down by brute force. The case concerns not labor relations but hoodlumism.

QUESTION PRESENTED

The only question presented by the Petition for Writ of Certiorari is whether the Labor Management Relations Act of 1947 has abrogated an employer's right to recover damages at law for the common law tort of violence committed by Petitioners.

ARGUMENT

The position of this Court with respect to the issue presented is already clear.

In *International Union* v. *O'Brien,* 339 U.S. 454, 457 (1950), the Court ruled that Congress has occupied and closed to the States the field of "regulation of *peaceful* strikes for higher wages."

So also in *International Union* v. *Wisconsin Employment Relations Board,* 336 U.S. 245, 253 (1949), the Court said:

> ". . . However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor Management

Relations Act of 1947, that 'Congress designedly left open an area for state control'. . . ."

* * *

"While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the states' power to police coercion by those methods."

To the same effect the Court said in *N.L.R.B.* v. *International Rice Milling Co.*, 341 U.S. 665, 672 (1951):

"In the instant case, the violence on the picket line is not material. The complaint was not based upon that violence, as such. *To reach it, the complaint more properly would have relied upon §8(b)(1)(A) or would have addressed itself to local authorities. . . .*" (Emphasis added).

See also *Allen Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740 (1940).

The decision below in the case at bar has no importance in administration of the Act, since the National Labor Relations Board, in its latest expression, is in accord with the decision below. See *In the Matter of Texas Foundries, Inc.*, 101 N.L.R.B. #249 (1952), where the Board adopted the following as its decision:

"The argument that the State court was without jurisdiction proceeds from the premise that Congress

> has vested in the Board and in the Federal courts the exclusive power to regulate conduct such as was reached by the injunction, thereby foreclosing State court jurisdiction. . . . The injunction obtained by the Respondent was aimed not at the right to strike or to engage in concerted activities, a subject outside State jurisdiction where interstate commerce is involved, but at the methods, alleged to be illegal under State law, by which it was claimed the strike was being conducted. Decisions of the United States Supreme Court have made clear that the Act does not preclude States from exercising their traditional police power and injunctive control over unlawful conduct that may be committed during the course of a strike or labor dispute. See *Allen Bradley Local* v. *Wisconsin ERB*, 315 U.S. 740; *International Union* v. *Wisconsin ERB*, 336 U.S. 245. I am therefore unable to agree that the court was without jurisdiction."

In fact, the authorities are unanimous that, whether or not such conduct is an unfair labor practice within the contemplation of the Labor Management Relations Act of 1947, State law may provide a remedy when violent coercion is employed.* *Russell* v. *United Auto Workers*, ... Ala. ....., 64 So. (2d) 384 (1953); *Lodge Mfg. Co.* v. *Gilbert*, 32 L.R.R.M. 2500 (Sup. Ct. Tenn. 1953); *Erwin Mills* v. *TWUA*, 235 N.C. 107, 68 S.E. (2d) 813 (1952); *Art Steel Co.* v. *Velasquez*, 280 App. Div. 76, 111 N.Y.S. (2d) 198 (1952); *Williams* v. *Cedartown Textiles, Inc.*, 208 Ga. 659, 68 S.E. (2d) 705 (1952); *Wortex Mills, Inc.* v.

* All of the cases cited by Petitioners involved the extent to which a state might regulate *peaceful* labor activities affecting interstate commerce. That question will no doubt be clarified in *Garner* v. *Teamsters, Chauffeurs and Helpers*, Local Union 776, 373 Pa. 19, 94 A. (2d) 893 (1953), in which certiorari was granted by this Court on June 15, 1953. That question is not involved here.

Textile Workers Union, 369 Pa. 359, 85 A. (2d) 851 (1952); *International Moulders* v. *Texas Foundries*, 241 S. W. (2d) 213 (Tex. Civ. Apps., 1951); *Grist* v. *Textile Workers Union*, ... R.I. ....., 82 A. (2d) 402 (1951); *Rice & Holman* v. *United Electrical Radio & Machine Workers*, 3 N.J.S. 288, 65 A. (2d) 638 (1949); *Southern Bus Lines, Inc.* v. *Amalgamated Ass'n.*, 205 Miss. 354, 38 So. (2d) 765 (1949); *Missouri* v. *Thatch*, 361 Mo. 190, 234 S.W. (2d) 1 (1950).

There is no public interest in having this Court reiterate what is generally understood to be, and what necessarily must be, the law.

CONCLUSION

The petition should be denied.

August 19, 1953.

Respectfully submitted,

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